12-19-2013

State v. Garza Appellant's Brief Dckt. 40920

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. JOAQUIN GARZA, Defendant-Appellant.	NO. 40920 CANYON COUNTY NO. CR 2012-19848 APPELLANT'S BRIEF

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

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STATEMENT OF THE CASE

Nature of the Case

Joaquin Garza was charged with committing the crime of aggravated battery under the alternative theories that he either committed the battery himself, or that he aided and abetted another in doing so. Mr. Garza testified on his own behalf and maintained his innocence. Over defense counsel's objection, the district court allowed the prosecutor to present evidence that Mr. Garza was a convicted felon, ostensibly to impeach his credibility. Mr. Garza asserts that the district court abused its discretion by allowing the prosecutor to present this evidence, because his prior conviction was for a crime of violence and, thus, did not weigh on his credibility.

Statement of the Facts and Course of Proceedings

Mr. Garza was charged by Information with the crime of aggravated battery under the alternative theories that he either struck the victim himself or that he aided and abetted another in doing so. (R., pp.25-26.) The prosecutor later added an allegation that Mr. Garza was eligible for a persistent violator enhancement having been convicted of two prior felonies, and the case proceeded to trial. (R., pp.56-57, 79-100.)

Jayme "Gus" Madler testified that he went to the Getaway Bar at around 8:00 or 8:30 p.m. on Wednesday, February 29, 2012, in order to play "beer pong" with some friends. (Tr. Trial, p.256, L.1 – p.261, L.21.) When he arrived, Michael St. Peter asked him to go outside where Mr. St. Peter, Charles Welchert, Dustin McGuire, Megan Demelo, and one other person whom he could not identify, confronted him about whether he had something to do with Isaac Rodriguez getting into legal trouble.[1]

[1] Mr. Madler had previously known most of the people in the group that confronted him and he had recently broken up with Maria Rodriguez, Isaac Rodriguez's sister, although

(Tr. Trial, p.262, L.17 – p.263, L.25.) Mr. Madler was threatened by someone in the group and he went back inside. (Tr. Trial, p.264, Ls.4-20.) Mr. Garza was not with the group of people who threatened Mr. Madler. (Tr. Trial, p.264, Ls.1-3.)

Over the next three-and-one-half hours, Mr. Madler played beer pong, visited with friends, and drank beer. (Tr. Trial, p.264, L.21 – p.265, L.14.) Mr. Madler testified that Mr. St. Peter, Mr. Welchert, and the person he did not know were giving him dirty glances throughout the night. (Tr. Trial, p.267, L.13 – p.268, L.6.) He did not see Mr. Garza with the group until right around midnight. (Tr. Trial, p.268, Ls.7-21.) Mr. Madler then went outside to retrieve some cigarettes from a friend's car when the person he did not know came after him and took a swing at him (and missed), he took off running, and Mr. Garza then took a swing at him (and missed). (Tr. Trial, p.269, L.1 – p.272, L.25.) Mr. Madler testified that was eventually tackled and "that's when I went lights out," meaning he was unconscious and did not know what transpired. (Tr. Trial, p.273, Ls.1-20.) Mr. Madler awoke to discover that he suffered significant injuries to his face including missing teeth, cuts to his lip, and nose, and swelling around his eyes.[2] (Tr. Trial, p.273, L.21 – p.274, L.7.)

Mr. Madler was "obviously intoxicated" and while he was able to identify Michael St. Peter as one of his attackers from a photo line-up given to him at the hospital, he was unable to identify Mr. Garza from a photo line-up, and he only agreed that Mr. Garza was involved after an officer mentioned his name. (Tr. Trial, p.135, L.1 –

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he was again dating her at the time of his testimony. (Tr. Trial, p.257, Ls.10-24, p.259, L.7 – p.260, L.3.)

[2] The extent of Mr. Madler's injuries were documented in photographs, a video taken while an officer was taking photographs of the injuries, and by the testimony of Dr. Jeffrey Dingman, who treated Mr. Madler. (Tr., p.157, L.17 – p.164, L.24, p.207, L.9 – p.224, L.25; Exs.3-19.)

p.142, L12; p.147, L.18 – p.151, L.4.) The jury was presented with unfocused surveillance footage of the scene and Mr. Garza was identified as one of the people who left the bar soon after Mr. Madler; however, the footage does not capture Mr. Madler being tackled or actually struck. (Tr. Trial, p.225, L.18 – p.236, L.15 (testimony of Chelsea Baker, a waitress at the Getaway Bar, who testified that she knew most of the people depicted in the surveillance videos including Mr. Garza, and identified Mr. Garza as wearing a lighter colored sweatshirt); Exs.23-26 (DVDs of footage taken from 4 different surveillance cameras); Ex.27 (DVD compilation of the footage contained in Exs.23-26).)

At the beginning of the second day of trial, the prosecutor advised that he would seek to impeach Mr. Garza with his prior conviction for "unlawful shooting at an occupied dwelling," if Mr. Garza chose to testify. (Tr. Trial, p.251, L.16 – p.252, L.5.) The prosecutor agreed with the Court that Mr. Garza's conviction "falls within the second category of felony convictions, admissible for the fact of conviction but not the nature." (Tr. Trial, p.252, Ls.6-10.) Defense counsel objected and the district court responded by stating,

> Okay. Well, I believe that if your client takes the stand that felony convictions where a crime of violence falls within the second category recognized by our appellate courts as – which means it can be – he can be asked if he's ever been previously convicted of a felony but not the nature of the felony (sic).

(Tr. Trial, p.252, Ls.11-23.) Defense counsel then asserted that the nature of his objection is that there is no case law indicating that discharge of a firearm at a dwelling is a violent offense, and the district court held,

> I understand your objection, but I think clearly that is a crime of violence that carries with it a threat of injury to people, and that's the reason it's made criminal. So I think it falls within that second category.

(Tr. Trial, p.252, L.24 – p.253, L.17.) Prior to Mr. Garza taking the stand, the district court stated, "[a]nd my ruling on the felony conviction is that it's a crime of violence. It falls within the second category which is the reason the fact of a conviction may be elicited but not the nature of the charge." (Tr. Trial, p.353, L.21 – p.354, L.11.)

Mr. Garza testified that he arrived at the Getaway Bar at around 11:30 p.m. on the night of the incident and that he was visiting his friends Madison Haueisen and Victor Pancheko. (Tr. Trial, p.355, L.8 – p.356, L.17.) Mr. Garza knows Mr. St. Peter, Mr. Schink, and Ms. Demelo, and he knows of Mr. McGuire, but he did not know Mr. Welchert, and he did not go to the bar to meet with them as they were not friends. (Tr. Trial, p.356, L.24 – p.358, L.23.) Some of the people in the group came up to Mr. Garza and stated that Isaac Rodriguez had been arrested because someone had "told on him" and stated that there may be a fight with Mr. Madler. (Tr. Trial, p.358, L.1 – p.359, L.10.) Mr. Garza testified that he told the group members that whatever they did was their choice, but that he did not want to get into any trouble. (Tr. Trial, p.361, L.22 – p.362, L.9.) Mr. Garza was aware that Mr. St. Peter and the other group members were known to get into fights. (Tr. Trial, p.363, Ls.9-20.)

Mr. Garza admitted that he followed the group outside believing that there would be a one-on-one fight and that he wanted to see what was going on. (Tr. Trial, p.364, L.15 – p.365, L.22.) Mr. Garza denied that he was trying to cut-off Mr. Madler although he admitted that the surveillance video made it appear that he was. (Tr. Trial, p.367, L.19 – p.368, L.4.) He did not see Mr. Madler get tackled but he did see him being stomped on by at least two people while unconscious, and Mr. Garza took off running. (Tr. Trial, p.368, L.24 – p.369, L.22.) He denied striking Mr. Madler in any way, stating that it was Mr. St. Peter and at least one other who did so. (Tr. Trial, p.369, L.23 –

p.370, L.18.) Mr. Garza returned to the Getaway Bar later that night while the police were there and he met up again with Ms. Haueisen and her sister. (Tr. Trial, p.371, L.9 – p.372, L.22.) He eventually got in his truck, which was parked near where the battery occurred, and he left with Ms. Haueisen's sister without being stopped or questioned by the police. (Tr. Trial, p.373, L.8 – p.374, L.14.)

The prosecutor began his cross-examination first by verifying that he had never spoken with Mr. Garza[3], and then by asking "[a]nd let's get something off the table here. You're a convicted felon, aren't you?" to which Mr. Garza answered, "Yes, I am." (Tr. Trial, p.375, Ls.11-16.)

Madison Haueisen testified that she met up with Mr. Garza and others at the Getaway on the night in question and that she later heard about Mr. Madler being attacked but that she did not witness it occur. (Tr. Trial, p.385, L.1 – p.388, L.7.) She saw Mr. Garza at around closing time, he did not look disheveled, and he did not have any blood on him. (Tr. Trial, p.388, L.22 – p.389, L.4.) She did not recall any conversation about a fight that night. (Tr. Trial, p.389, Ls.5-6.) There was no indication that Mr. Garza had been involved in any fight. (Tr. Trial, p.390, Ls.18-24.)

The prosecutor concluded his rebuttal closing argument by noting that the jurors are the ones who have to make credibility determinations, "[a]nd I'll also submit to you – and this is something you can consider – who has the felony conviction in this case? Thank you very much." (Tr. Trial, p.435, L.23 – p.436, L.9.) The jury found Mr. Garza

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[3] Although there does not appear to be any legal relevance to whether Mr. Garza and the prosecutor had met before, and the inquiry could be construed as a comment on Mr. Garza's post-arrest, pre-trial silence raising an inference of his guilt, defense counsel did not object and the prosecutor made no further inquiry into the fact that Mr. Garza had not previously spoken to the prosecutor. Therefore, Mr. Garza does not raise any issue related to this question in this appeal.

guilty of aggravated battery by aiding and abetting, but not guilty of aggravated battery by personally committing the battery. (R., pp.141-142; Tr. Trial, p.443, L.21 – p.444, L.22.) The jurors additionally found that Mr. Garza had two prior felony convictions at the conclusion of Part II of the trial. (R., pp.143-144; Tr. Trial, p.446, L.16 – p.471, L.14.) Mr. Garza was sentenced to a unified term of fifteen years, with five years fixed, and he filed a timely Notice of Appeal. (R., pp.162-163, 173-176.)

ISSUE

Did the district court err when it allowed the State to present evidence pursuant to I.R.E. 609 and over defense objection, that Mr. Garza was a convicted felon, as his felony conviction was for a crime of violence and, thus, did not weigh on his credibility?

ARGUMENT

The District Court Abused Its Discretion When It Allowed The State To Present Evidence Pursuant To I.R.E. 609 And Over Defense Objection, That Mr. Garza Was A Convicted Felon, As His Felony Conviction Was For A Crime Of Violence And, Thus, Did Not Weigh On His Credibility

A. Introduction

Mr. Garza had previously been convicted of unlawful discharge of a firearm at a dwelling-house, in violation if Idaho Code § 18-3317. The district court correctly found that this conviction was for a crime of violence. However, the district court abused its discretion when it allowed the prosecutor to present evidence that Mr. Garza was a convicted felon because unlawful discharge of a firearm at a dwelling-house is a crime of violence and, thus, has no bearing on Mr. Garza's credibility. Permitting the State to present this evidence violated I.R.E. 609 and the State will be unable to prove that the district court's error was harmless beyond a reasonable doubt.

B. Applicable Jurisprudence

Idaho appellate courts apply an abuse of discretion standard when reviewing a lower court's decision to either admit or exclude evidence. *State v. Almaraz*, 154 Idaho 584, 590 (2013) (quoting *White v. Mock,* 140 Idaho 882, 888 (2004).) "'A trial court does not abuse its discretion if it (1) recognizes the issue as one of discretion, (2) acts within the boundaries of its discretion and applies the applicable legal standards, and (3) reaches the decision through an exercise of reason.'" *Id.* (quoting *Fazzio v. Mason,* 150 Idaho 591, 594 (2011).)

Idaho Criminal Rule 609(a) reads as follows:

> For the purposes of attacking the credibility of a witness, evidence of the fact that the witness has been convicted of a felony and the nature of the felony shall be admitted if elicited from the witness or established by public record, but only if the court determines in a hearing outside the presence of the jury that the fact of the prior conviction or the nature of the prior

> conviction, or both, are relevant to the credibility of the witness and that the probative value of admitting this evidence outweighs its prejudicial effect to the party offering the witness. If the evidence of the fact of a prior felony conviction, but not the nature of the conviction, is admitted for the purpose of impeachment of a party to the action or proceeding, the party shall have the option to present evidence of the nature of the conviction, but evidence of the circumstances of the conviction shall not be admissible.

I.R.E. 609 (a). The Idaho Supreme Court has established three categories of felonies as they relate to the credibility of the witness. *State v. Thompson*, 132 Idaho 628, 631 (1999) (citing *State v. Ybarra*, 102 Idaho 573 (1981)). The first category involves crimes such as perjury which are "'intimately connected' with the issue of credibility. *Id.* (quoting *Ybarra*, 102 Idaho at 580.) The second category "involves crimes such as robbery or burglary which are 'somewhat less relevant' to the issue of credibility." *Id.* The third category relate to acts of violence which generally do not relate to the credibility of the witness. *Id.* (citations omitted).

The trial court must make two determinations: First, whether the nature of the conviction is relevant to the witness' credibility; second, whether the probative value of the evidence outweighs its prejudicial effect. *Id.* 132 Idaho at 630. The district court's determination that the prior conviction is relevant is reviewed *de novo*, while the district court's determination of the probative value versus its prejudicial effect is reviewed for an abuse of discretion. *Id.*

C. The District Court Erred In Determining That Violation Of I.C. § 18-3317 Falls Into The "Second Category" And Mr. Garza's Conviction For This Crime Was Not Relevant To His Credibility

Although the district court did not specifically cite to I.R.E. 609, *Thompson* or *Ybarra*, the court's finding that unlawful discharge of a firearm at a dwelling house is a "crime of violence [which] falls within the second category recognized by our appellate courts" and thus "he can be asked if he's ever been previously convicted of a felony but

not the nature of the felony" (Tr. Trial, p.251, L.16 – p.252, L.20), demonstrates that the court was applying the *Ybarra* analysis to Rule 609.[4] The district court's conclusion that a violation of I.C. § 19-3317 is a "crime of violence" for purposes of I.R.E. 609 is not challenged in this appeal. I.C. § 19-3317 reads as follows,

> It shall be unlawful for any person to intentionally and unlawfully discharge a firearm at an inhabited dwelling house, occupied building, occupied motor vehicle, inhabited mobile home, inhabited travel trailer, or inhabited camper. Any person violating the provisions of this section shall be guilty of a felony, punishable by imprisonment in the state prison for a term not to exceed fifteen (15) years.
>
> As used in this section, "inhabited" means currently being used for dwelling purposes, whether occupied or not.

I.C. § 18-3317. Although "crime of violence" is not specifically defined in *Thompson*, shooting a firearm into a dwelling, whether currently occupied or not, is not the type of conduct that weighs one way or the other a person's credibility or truthfulness. Unlike "crimes such as perjury which are 'intimately connected' with credibility issues" or "crimes such as robbery or burglary which are 'somewhat less relevant' to the issue of credibility," shooting firearm into a dwelling has "'"little to no direct bearing on honesty and veracity."'" *State v. Thompson*, 132 Idaho at 631 (quoting *State v. Ybarra*, 102 Idaho at 580-581 (in turn quoting *People v. Rollo*, 569 P.2d 771, 775)). Thus, *de novo* review of I.C. § 18-3317 demonstrates that the district court correctly found that a violation of I.C. § 18-3317 is a "crime of violence" under the *Ybarra* analysis.

However, the district court erred in determining that Mr. Garza's conviction for unlawful discharge of a firearm at dwelling is relevant to Mr. Garza's credibility. Crimes

[4] The *Ybarra* case was decided in 1981 and precedes the adoption of I.R.E. 609, which occurred in 1985. However, in the *Thompson* case decided in 1998, the Court applied the *Ybarra* analysis to an issue raised pursuant to I.R.E. 606. Thus, the standards originally announced in *Ybarra* apply to evidence admitted pursuant to I.R.E. 609.

of violence do not, as the court found, fall into *Ybarra*'s "second category"; rather, crimes of violence fall into the third category, i.e., they have little to no direct bearing on credibility. *State v. Thompson*, 132 Idaho at 631. Because shooting a firearm at a dwelling house has no bearing on Mr. Garza's credibility, the district court erred in determining that jurors could consider the fact that Mr. Garza is a convicted felon when weighing his credibility.

D. The District Court Abused Its Discretion By Allowing The State To Present Evidence That Mr. Garza Is A Convicted Felon

As Mr. Garza's prior conviction for shooting a firearm at a dwelling house had no relevance to his credibility and was not admissible pursuant to I.R.E. 609, the district court acted outside the bounds of its discretion when it allowed the State to present evidence that Mr. Garza was a convicted felon. Therefore, the district court abused its discretion when it allowed the State to present this irrelevant evidence, over defense counsel's objection.

E. The State Will Be Unable To Prove The Error Was Harmless Beyond A Reasonable Doubt

Where alleged error is followed by a contemporaneous objection and the appellant shows that a violation occurred, the State bears the burden of proving the error was harmless beyond a reasonable doubt, based upon the test articulated by the United States Supreme Court in *Chapman*. *See State v. Perry*, 150 Idaho 209, 227 (2010).

> Under the *Chapman* harmless error analysis, where a constitutional violation occurs at trial, and is followed by a contemporaneous objection, a reversal is necessitated, *unless* the State proves "beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained."

State v. Almaraz, 154 Idaho at 598 (citing *State v. Perry,* 150 Idaho 209, 221 (2010) (in turn quoting *Chapman v. California,* 386 U.S. 18, 24 (1967)).) Indeed, the United States Supreme Court has held,

> The inquiry, in other words, is not whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered in *this* trial was surely unattributable to the error. That must be so, because to hypothesize a guilty verdict that was never in fact rendered—no matter how inescapable the findings to support that verdict might be—would violate the jury-trial guarantee.

Sullivan v. Louisiana, 508 U.S. 275, 279-80 (1993) (citations omitted).

The State will not be able to prove beyond a reasonable doubt that the district court's erroneous decision to allow the jury to hear that Mr. Garza is convicted felon did not contribute to the verdict. The prosecutor recognized that the jurors would have to make a credibility determination as Mr. Garza's testimony differed from evidence presented by the State, and the prosecutor argued to the jury, "[a]nd I'll also submit to you – and this is something you can consider – who has the felony conviction in this case? Thank you very much." (R., pp.141-142; Tr. Trial, p.435, L.23 – p.436, L.9.) Where the State itself stressed the importance of Mr. Garza's felony conviction to the jurors when making credibility determinations, the State will not be able to prove beyond a reasonable doubt that the jurors' consideration of the fact that Mr. Garza is a convicted felon, did not contribute to their determination that he was guilty of aiding and abetting the aggravated battery in this case.

CONCLUSION

Mr. Garza respectfully requests that this Court vacate his conviction and remand his case for further proceedings.

DATED this 19th day of December, 2013.

JASON C. PINTLER
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 19th day of December, 2013, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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